

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 29, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1398

Cir. Ct. No. 1999PA270

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN RE THE FINDING OF CONTEMPT IN
IN RE THE PATERNITY OF AUBRE M. PETERSEN:**

STATE OF WISCONSIN AND KIMBERLY A. UTTENBROEK,

PETITIONERS-RESPONDENTS,

V.

MARK R. PETERSEN,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Winnebago County:
JOHN A. JORGENSEN, Judge. *Affirmed.*

¶1 REILLY, J.¹ Mark R. Petersen appeals an order denying his motion for a new evidentiary hearing on whether to lift the stay on a 120-day jail term ordered for his contempt of court. We affirm as the court properly denied Petersen’s request for an unnecessary hearing.

BACKGROUND

¶2 Petersen was found in contempt of court for failing to follow a court order that he pay child support and seek employment. The circuit court stayed imposition of a 120-day jail term for the contempt, provided that Petersen comply with a number of conditions. Six months later, the court held a hearing on whether to lift the stay. The court lifted the stay after finding that Petersen had failed to meet the conditions to purge the contempt. After serving his 120 days in jail for contempt, Petersen moved the circuit court for a new evidentiary hearing based on alleged errors in the hearing that addressed whether to lift the stay. Petersen asserted that he was entitled to a new hearing as at the prior hearing he was prevented from giving a legal justification for his actions and the court relied on improperly admitted evidence. Petersen did not assert that he had met the conditions necessary to purge the contempt finding and prevent the stay from being lifted.

¶3 At a hearing on his motion, Petersen conceded that as he already had served his jail time, “the relief really only could be ... that he could have his day in court.” The court denied Petersen’s motion, finding that no errors had been

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

committed at the previous hearing and that his motion was moot as there was no remedy available to him. Petersen appeals.

DISCUSSION

¶4 Significant to Petersen’s appeal is that it does not challenge the finding of contempt nor does it challenge the 120-day jail term ordered for that contempt. Petersen’s appeal is restricted to whether the court erred in denying his motion for another evidentiary hearing on the issue of whether the stay of the 120-day jail term should be lifted. Petersen argues the court should have granted his request for a hearing regardless of the fact that he brought his motion after he served his time and could receive no relief from a new hearing. We disagree. A court may “conserve scarce judicial resources by eliminating unnecessary evidentiary hearings.” *State v. Velez*, 224 Wis. 2d 1, 12, 589 N.W.2d 9 (1999). A new evidentiary hearing on the issue of whether to lift the 120-day jail term for contempt was unnecessary as Petersen already had served his jail time. The court properly denied Petersen’s motion and “conserve[d] scarce judicial resources.” *Id.*

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

